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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF ARIZONA**

12 Default Mitigation Management, LLC and
13 Igor Roitburg,

14 Case No: _____

15 Plaintiffs,

16 **COMPLAINT**

17 v.

18 Hope Loanport, Inc.,

19 Defendant.

20 For their Complaint, plaintiffs Default Mitigation Management LLC and Igor
21 Roitburg allege as follows:

22 **THE PARTIES**

23 1. Plaintiff, Default Mitigation Management, LLC, is a limited liability company
24 organized under the laws of Kentucky, with its principal offices at 631 Washington
25 Avenue, Newport, Kentucky, 41071 (“Plaintiff DMM”).

26 2. Plaintiff, Igor Roitburg, is an individual residing at 306 Harlingen Road, Belle
27 Mead, New Jersey, 08502 (“Plaintiff Roitburg”).

28 3. Defendant, Hope Loanport, Inc., is a corporation organized under the laws of the
District of Columbia, with its principal offices at 1001 Pennsylvania Avenue, N.W., Suite
500, Washington, D.C. 20004 (“Defendant”).

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NATURE OF THE ACTION

4. This action is brought under the federal Lanham Act, 15 U.S.C. § 1051, et. seq.

5. This action is further brought under the federal Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

6. This action is further brought under the Declaratory Judgment Act, 28 U.S.C. §§ 01 and 2202.

7. Through this action, Plaintiffs seek the cancellation of U.S. Registration No. 4,017,935 (the “Registration”) for the alleged trademark HOPE LOANPORT (the trademark”).

8. Also through this action, Plaintiffs seek a declaration that, among other things, Plaintiff Roitburg's registration and use, and Plaintiff DMM's use of the domain names `hopeloanport.com`, `hopeloanport.org`, and `hopeloanport.net` (the "Domains") does not violate any enforceable rights of Defendant. Plaintiffs Roitburg and DMM seek to bar the transfer of the Domains to Defendant.

JURISDICTION AND VENUE

9. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338.

10. Jurisdiction is further proper by virtue of Defendant's express submission to the jurisdiction of this Court by filing a complaint under the Uniform Domain Name Dispute Resolution Policy (the "UDRP"), as detailed below.

11. Venue is proper under 28 U.S.C. § 1391(b)(2).

12. In addition, Defendant agreed that venue is proper in this Court when it filed its
DRP complaint.

FACTS

13. Part of the “Emergency Economic Stability Act of 2008,” signed into law in response to the mortgage crisis, included the HOPE for Homeowners Act (the “HOPE”), a federal loan modification program.

1 14. After the inception of the HOPE Act, Plaintiff DMM, Defendant, and other
2 entities began providing loan modification services for loans that qualified for modification
3 under the HOPE Act and subsequent, related legislation.

4 15. Plaintiff DMM has been engaged in the business of offering a loan modification
5 portal, including loan modifications pursuant to the various government-sponsored HOPE
6 initiatives, since 2008.

7 16. Plaintiff DMM provides loan portals through which homeowners who qualify for
8 modifications under the HOPE Act and subsequent, related legislation, including HAMP
9 and the “Making Home Affordable Program” (the “MHA”), can modify their mortgage
10 loans.

11 17. Because of the nature of Plaintiff DMM’s business, Plaintiff Roitburg registered
12 several domain names, all of which describe the services Plaintiff DMM provides, with
13 GoDaddy.com, LLC (the “Registrar”), including the Domains, and <hampportal.com>,
14 <hampportal.org>, <mhaportal.org>, and <mhaportal.com>.

15 18. The Registrar is located in this judicial district.

16 19. Defendant operates a website (located at <http://www.hopeloanportal.org>) that
17 allows borrowers to complete an online intake form to request assistance, and allowing
18 housing counselors to transmit completed applications for loan modifications to mortgage
19 companies.

20 20. Defendant’s use of the term “hope loanport” merely describes the business activity
21 in which it and other loan modification companies, including Plaintiff DMM, are engaged.

22 21. Defendant’s use of the term “hope loanport” is not unique or distinctive, but is
23 rather consistent with uses by other entities in the loan modification business and the
24 common understanding of the terms in the context of the HOPE Act and related state
25 initiatives.

26 22. Financial Services Roundtable (“FSR”) filed a trademark application on
27 November, 12, 2009 for the term “HOPE LOANPORT,” Application Serial No. 77-

1 871,067, based on a bona fide intent to use the mark under Section 1(b) of the Lanham Act,
2 15 U.S.C. § 1051(b)

3 23. The Trademark is generic and/or descriptive of Defendant's loan modification
4 services, a web site portal through which applications for loans that qualify for
5 modification under the HOPE Act and related legislation are processed.

6 24. On February 8, 2011, Defendant was granted the Registration for the Trademark in
7 class 36 for: "loan modification services and providing a web site that allows mortgage
8 counselors and homeowners at risk of foreclosure to apply for loan modification with their
9 lenders" (the "Registration").

10 25. The Registration had a constructive first use date of November 12, 2009, the filing
11 date of the intent-to, and claims first use in commerce as of November 15, 2009

12 26. Plaintiff DMM was in the loan modification business before Defendant.

13 27. In 2008, HUD asked Plaintiffs to approach Hope Now, the entity out of which
14 Defendant evolved, to discuss the idea of having Hope Now use Plaintiff DMM's loan
15 portal to process loan modifications.

16 28. Hope Now decided to start its own loan portal - Defendant, Hope LoanPort, Inc.

17 29. Plaintiffs first learned that Defendant was attempting to enforce trademark rights
18 against Plaintiff Roitburg on October 2, 2012, when Plaintiff Roitburg received notice that
19 Defendant filed a UDRP complaint against him with the World Intellectual Property
20 Organization at Case No. D2012-1932, to force the transfer of ownership of the Domains
21 from Plaintiff to Defendant.

22 30. When Plaintiff Roitburg discovered the claims of Defendant in the UDRP
23 proceeding, Plaintiff Roitburg filed a response to Defendant's complaint and
24 simultaneously, Plaintiff DMM filed a Petition to Cancel Defendant's Trademark with the
25 United States Patent and Trademark Office, seeking to cancel the Registration on the basis
26 of the Trademark being descriptive and generic.

27 31. The cancellation proceeding is pending in the United States Patent and Trademark
28 Office.

1 32. On or about December 6, 2012, the UDRP panel issued its ruling in favor of
2 Defendant.

3 33. On December 11, 2012, in accordance with the UDRP policy and rules, the
4 Registrar notified Plaintiff Roitburg that he had until December 26, 2012 to initiate a
5 federal action in order to prevent the transfer of the Domains.

6 34. Plaintiffs' registration and use of the Domains do not violate federal trademark
7 law, and are wholly permissible under both federal and various states' trademark laws.

8 35. The UDRP panel's decision was incorrect and contrary to law.

9 36. Defendant's use of the Trademark to demand that Plaintiff Roitburg transfer the
10 Domains to Defendant is improper.

11 37. Defendant's actions to enforce any trademark rights in and to the Trademark
12 prevent Plaintiffs and others in the loan modification business from conducting their
13 legitimate businesses.

14 38. Defendant's continued registration and enforcement of the Registration will cause
15 irreparable harm to Plaintiffs and will unjustly inhibit and interfere with Plaintiffs' abilities
16 to conduct their business.

COUNT I

(Lanham Act - Lack of Bona Fide Intent to Use)

15 U.S.C. § 1051(b)

20 39. Plaintiffs hereby incorporate by reference all previous paragraphs of this
21 Complaint.

22 40. On November 12, 2009, Financial Services Roundtable (“FSR”) filed an intent-to-
23 use application under 15 U.S.C. § 1051(b) with the U.S. Patent and Trademark Office to
24 register the Trademark on the Principal Register in Class 36.

25 41. FSR's identified intended uses include "[l]oan modification services and providing
26 a Web site that allows mortgage counselors and homeowners at risk of foreclosure to apply
27 for loan modification with their lenders."

42. Upon information and belief, FSR is an industry trade organization comprised of the leadership of large financial institutions, whose primary purpose is to inform and educate its members on current events, with a focus on financial and economic issues.

43. Upon information and belief, FSR's business does not involve providing loan modification services through a web-based loan portal, nor did it at the time the application was filed.

44. Upon information and belief, FSR lacked a bona fide intention to use the Trademark in commerce when it filed its intent-to-use application or otherwise.

45. On August 23, 2010, FSR assigned the application for the Registration to Defendant.

46. Upon information and belief, FSR never used the Trademark before assigning it to Defendant.

47. Based on FSR's lack of bona fide intent to use the Trademark in commerce when it filed its intent-to-use application, the Registration is invalid and should be cancelled.

COUNT II

(Lanham Act - Invalid Assignment)

15 U.S.C. § 1060(a)(1)

48. Plaintiffs hereby incorporate by reference all previous paragraphs of this Complaint.

49. When FSR assigned its intent-to-use application to Defendant, no amendment under 15 U.S.C. § 1051(c) had been filed, nor had any verified statement of use under 15 U.S.C. § 1051(d) been filed.

50. When FSR assigned its intent-to-use application to Defendant, FSR did not have an ongoing and existing business under the Trademark that could be assigned to a successor.

51. Upon information and belief, Defendant was not a successor to FSR or a portion of FSR's ongoing and existing business to which the Trademark pertained.

52. Upon information and belief, the assignment between FSR and Defendant did not include the good will of FSR's business in which the Trademark was used, or with any part

1 of the good will of FSR's business connected with the use of and symbolized by the
2 Trademark.

3 53. The failure of the assignment from FSR to Defendant to comply with 15 U.S.C. §
4 1060(a)(1) invalidates the Registration and the Registration should be cancelled.

5 **COUNT III**

6 **(Merely Descriptive Trademark)**

7 **15 U.S.C. § 1052(e)**

8 54. Plaintiffs hereby incorporate by reference all previous paragraphs of this
9 Complaint.

10 55. The terms "hope," "loan," and "port" clearly and directly refer to a web portal
11 used to apply for loan modifications related to the HOPE Act or subsequent legislation and
12 related homeowner initiatives.

13 56. The terms "hope," "loan," and "port" are therefore merely descriptive of the
14 services recited in the Registration, or descriptive of a significant feature, quality, attribute
15 or characteristic of the services because these terms refer to the subject matter of
16 Defendant's services.

17 57. The terms "hope," "loan," and "port" are necessary to accurately describe the
18 subject matter of Plaintiff DMM's and other third parties' loan modification services.

19 58. Plaintiff DMM and other third parties have the right to use the terms "hope,"
20 "loan," and "port" are in connection with describing the subject matter of their loan
21 modification services.

22 59. The fact that Defendant has compressed the terms "loan" and "port" into a single
23 word does not alter the descriptive significance of the individual terms and does not make
24 the terms "hope loanport" inherently distinctive.

25 60. The term "hope loanport" has not acquired distinctiveness with respect to the
26 services recited in the Registration, nor is it capable of becoming distinctive of any of the
27 services of any one entity related to offering a portal to modify loans under the HOPE Act
28 or any subsequent and related legislation.

1 61. If Defendant is allowed to continue to maintain the Registration, Defendant would
2 be able to continue to improperly obstruct Plaintiff DMM's as well as other third parties'
3 descriptive use of the term.

COUNT IV

(Generic Trademark)

15 U.S.C. § 1064(3)

7 62. Plaintiffs hereby incorporate by reference all previous paragraphs of this
8 Complaint.

9 63. Defendant is not entitled to exclusive use of the term "hope loanport" in commerce
10 for the services specified in the Registration.

11 64. The general public would not understand or believe that loan modification services
12 offered in connection with the term “hope loanport” refer to Defendant.

13 65. The term “hope loanport” is generic for a web-based portal through which
14 individuals can apply for loan modifications in connection with the HOPE Act or
15 subsequent legislation, and therefore is generic with regard to such services.

16 66. The term “hope loanport” is necessary to accurately describe the subject matter of
17 Plaintiff DMM’s and other third parties’ loan modification services.

18 67. Plaintiff DMM and other third parties' have the right to use the term "hope
19 loanport" in connection with their businesses and the loan modification services they
20 provide.

21 68. If Defendant is allowed to continue to maintain the Registration, Defendant would
22 be able to continue to improperly obstruct Plaintiff DMM's, as well as other third parties',
23 descriptive use of the terms.

24 69. Because the term “hope loanport” is incapable of serving as an indicator of source,
25 the Registration should be cancelled.

COUNT V

(Declaration Under Anticybersquatting Consumer Protection Act)

15 U.S.C. § 1125(d)

70. Plaintiffs hereby incorporate by reference all previous paragraphs of this Complaint.

71. In registering the Domains, Plaintiff Roitburg did not have a bad faith intent, as provided in 15 U.S.C. § 1125(d)(1)(A)(i), to profit from Defendant's trademark of the words "hope loanport."

72. The Domains are not identical, confusingly similar to, or dilutive of a mark that was distinctive or famous at the time of registration as provided in 15 U.S.C. § 1125(d)(1)(A)(ii).

73. The Domains are not, and do not contain, trademarks, words, or names protected by reason of section 706 of title 18 or section 220506 of title 36, as provided in 15 U.S.C. § 1125(d)(1)(A)(ii).

74. Plaintiffs believed and had reasonable grounds to believe that their registration and use of the Domains was a fair use or otherwise lawful use, as provided in 15 U.S.C. § 1125(d)(1)(B)(ii).

COUNT VI

(Declaratory Judgment)

28 U.S.C. §§ 2201 and 2202

75. Plaintiffs hereby incorporate by reference all previous paragraphs of this Complaint.

76. Based on the foregoing allegations, a dispute exists between Plaintiffs and Defendant concerning Plaintiffs' right to register and use the Domains.

77. As a consequence of this dispute, an actual and justiciable controversy exists between Plaintiffs and Defendants.

78. Plaintiffs are entitled to declaratory relief.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in favor of Plaintiffs. Specifically:

- A. An order to the U.S. Patent and Trademark Office cancelling U.S. Trademark Registration No. 3,917,935 for the mark HOPE LOANPORT;
- B. Declaring that the UDRP decision is contrary to law;
- C. Declaring that Plaintiff Roitburg is the lawful owner of the Domains;
- D. Declaring that Plaintiff Roitburg's registration and use of the Domains are lawful;
- E. Declaring that Plaintiff Roitburg is not required to transfer the registration for the Domains to Defendant;
- F. Ordering the Registrar to permanently refrain from transferring the Domains to Defendant; and
- G. Providing all other equitable relief that this Court deems just and proper.

REQUEST FOR JURY TRIAL

Plaintiff requests a jury trial on all issues triable by a jury.

DATED this 21th day of December, 2012.

KERCSMAR & FELTUS PLLC

By s/Todd Feltus

Todd Feltus

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*Attorneys for Default Mitigation Management LLC
and Igor Roitburg*

OF COUNSEL

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CERTIFICATE OF SERVICE

2 I hereby certify that on December 21, 2012, I electronically transmitted the
3 foregoing to the Clerk's Office using the CM/ECF System for filing.

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6 By s/ Todd Feltus _____

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